IN THE HIGH COURT OF JUDICATURE AT JABALPUR

W.P. No. 5071 /2000.

Petitioner : Kamdas Mandal Ratre,
S/o Late Shri Bhagchand Mandal Ratre, aged about 45 years,
Cashier incharge,
Punjab National Bank,
Achanak Marg,
Bilaspur- 495 113.

Versus

Respondents : 1. The Punjab National Bank
through its Zonal Manager,
Jawahar Nagar, Roshanpura,
Bhopal.

2. Punjab National Bank
through its Regional Manager,
Medical College Road,
Kacheri Chowk, Raipur.

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

(88) AFR

15-12-05

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 5071 of 2000

Kamdas Mandal Ratre

-Versus-

The Punjab National Bank & another

Post for order on 15th December, 2005.

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

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The Punjab National Bank & another

Mr. P. S. Koshy, Advocate for the petitioner.

Mr. Sudhir Agrawal, Advocate for the Respondents

ORDER

(15th December 2005)

By Justice Satish K. Agnihotri.

1. The present petition filed under Articles 226 and 227 of the Constitution of India impugns the order dated 24.4.2000 (Annexure P/1) passed by the Regional Manager of Punjab National Bank, Raipur in the capacity of Disciplinary Authority whereby a charge-sheet for misappropriation of Rs. 40,000/- which amounts to grave misconduct under the provisions of para 19.5 (j) of the Bipartite Settlement was issued.

2. The undisputed facts in nutshell are that on 19.1.1987 the petitioner while discharging his duties as Head Cashier (officiating) in the Main Branch at Raipur of Punjab National Bank with his subordinate Cashiers namely Shri Basant Dalal and late Shri R.B.Sharma caused shortage of Rs. 40,000/- in the bank by not depositing the same.

3. The F.I.R. of the incident was lodged with the police. The petitioner was placed under suspension with immediate effect on account of above shortage, pending disciplinary proceedings and departmental enquiry against the petitioner vide order dated 22.1.1987 (Annexure P/2). The petitioner along with Bashant Dalal was prosecuted for the

offence of criminal breach of trust by clerk or servant under section 408 read with 34 of the Indian Penal Code in Criminal Case No. 296/97. The Judicial Magistrate First Class, Raipur vide judgment and order dated 20.4.1999 found the petitioner guilty for having committed an offence under section 408 of the Indian Penal Code while holding that the offence under section 408 of the I.P.C. has not been found proved against co-accused Basant Dalal. Accordingly, the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 5000/-, in default of payment of fine amount to further undergo rigorous imprisonment for a period of 6 months.

4. On the basis of the conviction, service of the petitioner was terminated as per the provisions of para 19.3 (b) of the Bipartite Settlement dated 10.4.2002, vide order dated 5.7.1999 (Annexure P/3).

5. The petitioner filed an appeal in the Court of Third Additional Sessions Judge, Raipur against the judgment and order dated 20.4.1999 passed by the Judicial Magistrate First Class, Raipur in Criminal Case No. 296/97. The said appeal was registered in the Court of Third Additional Sessions Judge, Raipur as Criminal Appeal No. 125/99. The Third Additional Sessions Judge vide judgment and order dated 25.10.1999 (Annexure P/4) after having considered all the evidence came to the conclusion that it was not established and proved that the petitioner had committed an offence of criminal breach of trust under section 408 of the I.P.C. As such, the petitioner was acquitted from the charge of offence under section 408 of the I.P.C. The judgment and order passed by the Judicial Magistrate First Class, Raipur was set-aside and the appeal was allowed.

6. The petitioner filed a representation under the provisions of para 19.3 (d) of the Bipartite Settlement for consideration of his case for reinstatement on the basis of the acquittal in appeal.

7. The respondent/Bank after having considered the application of the petitioner reinstated the petitioner in service vide order dated 10.4.2000 (Annexure P/6). After reinstatement the respondent Bank issued a charge sheet on 24.4.2000 (Annexure P/1) for the same offence of shortage of an amount of Rs. 40,000/- which amounts to serious misconduct under para 19.5 (j) of the Bipartite Settlement, for which the petitioner was prosecuted in Criminal Case No. 296/97 by the Judicial Magistrate, Class-I, Raipur.

8. The petitioner has filed the present petition challenging the validity of the charge sheet dated 24.4.2000 on the ground that the employer/Respondent-Bank once having exercised its powers under the provisions of para 19.3 (d) of the Bipartite Settlement by reinstating the petitioner in service, the employer has no power to proceed departmentally against the petitioner for the same charge under clause 11 and 12.

9. I have heard Shri P. S. Koshy learned counsel for the petitioner and Shri Sudhir Agarwal, learned counsel for the respondents.

10. Shri P. S. Koshy, learned counsel appearing for the petitioner challenged the validity of the impugned order inter alia on two grounds:-

(i) That the respondent/Bank having exercised its power under the provisions of para 19.3(d) of the Bipartite Settlement by reinstating the petitioner in service, the impugned show cause notice Annexure P/1 is beyond power and competence of the respondent/Bank.

(ii) The disciplinary proceeding could not have been initiated after a delay of 13 years for the alleged incident which had taken place on 19.1.1987.

11. Learned counsel appearing for the respondents, per contra, submitted that the petitioner was acquitted in appeal due to technical fault and as such there was no bar to initiate departmental enquiry against the petitioner. Learned counsel admitted the applicability and binding effect of the Bipartite Settlement. According to learned counsel for the respondents, the service conditions of the petitioner is governed by various terms and conditions of the Bipartite Settlement.

12. I have heard learned counsel for the parties at great length, perused the records appended to the petition and to the return filed by the respondents. Admittedly, service conditions of the petitioner is governed by the provisions mentioned in Bipartite Settlement between the Indian Banks Association and All India Bank Employees Association dated 10.4.2002. The relevant provisions of para 19.3 (d) reads as under:-

> "If he prefers an appeal or revision application against his conviction and is acquitted, in case he had already been dealt with as above and he applies to the management for reconsideration of his case, the management shall review his case and may either reinstate him or proceed against him under the provisions set out below in Clauses 11 and 12 infra relating to discharge, and the provision set out above as to pay, allowances and the period of suspension will apply, the period up-to-date for which full pay and allowances have not been drawn being treated as one of suspension. In the event of the management deciding, after enquiry not to continue him in service, the employee shall be liable only for termination with three months' pay and allowance in lieu of notice, as directed above."

13. The respondent Bank terminated the service of the petitioner under the provisions of para 19.3(b) which reads as under:-

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"If he be convicted, he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as mentioned in Clause 6 below."

On the basis of the conviction of the petitioner for an offence under Section 408 of the I.P.C. by the J.M.F.C. vide order dated 20.4.1999, the service of the petitioner was terminated on 5.7.1999.

14. Thereafter the petitioner was reinstated in service in pursuance of acquittal in Criminal Appeal No. 125/99 vide order dated 10.4.2000. The impugned show cause notice dated 24.4.2000 was issued under the provisions of para 19.5 (j) of the Bipartite Settlement which reads as under:-

"doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss."

15. In view of the various orders passed by the respondent/Bank, it is clear that service conditions of the petitioner is governed by the terms of the Bipartite Settlement. Para 19.3 (d) clearly provides that if a delinquent employee is acquitted in an appeal the management shall review his case and may either reinstate him or proceed against him under the provisions set out in clauses 11 and 12 for departmental action. In the present case, the respondent/Bank has chosen to exercise first option by reinstating the petitioner in service vide order dated 10.4.2000, and as such under the terms of the Bipartite Settlement the Respondent/Bank cannot proceed against the petitioner for departmental action.

16. Prior to the present Bipartite Settlement, Shastri Award was applicable for the purpose of service conditions of the Banks Employees. Clause 521 (2) (d) which is para-materia with para 19.3(d) of the present Bipartite Settlement was under consideration before the High Court of Judicature, Bombay at Nagpur in Jeevan Prakash

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Pandurang Mokashe Vs. State Bank of India and another (1985 II LLJ 145). Learned Division Bench came to the conclusion as under:-

> "We think that the rule laid down in para 521(2) (d) of the Sastri Award empowers the employer to have recourse to any of the two courses. The consequence of the exercise of that course and the language adopted, in our opinion, clearly indicate that consequence must be followed and the options exercised at the time when any of the actions contemplated is to be taken. Therefore, in our opinion, when an employee who has been dealt with earlier is subsequently in an appeal is acquitted and makes a representation to the management for consideration of his case, then it is at that time that the management upon a review of his case decide whether it will reappoint him or reinstate him or proceed against him. Having once taken a decision, the words and the sequence of the procedure indicated and the language of the paragraph have now become the terms and conditions of the bank employees, the employer renders himself powerless either to alter that decision or change the course and pick up the other alternative."

17. I am in respectful agreement with the observations of the Division Bench in Jeevanprakash Pandurang Mokashe's case (supra). Accordingly, I am of the considered opinion that the respondent/Bank has no power to take recourse to second option i.e. to proceed against the petitioner for disciplinary action after having exercised its powers to reinstate the petitioner on acquittal by the appellate Court in criminal appeal.

18. In view of the above stated reasons, it is not necessary to go into the question as to whether the charge sheet could be issued belatedly after a period of 13 years from the date of incident.

19. The petitioner in his petition, though, has prayed for grant of all consequential benefits i.e. difference of wages, seniority and other consequential benefits in view of acquittal of the petitioner by the appellate Court, has not laid any foundation for grant of back wages

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and consequential benefits. The petitioner has neither stated anything with regard to the back wages in the pleadings or in the grounds nor has filed any documents in support of his claim for grant of back wages. Thus, in absence of pleadings and documents in support of the prayer, no order can be passed for grant of back wages.

20. For the reasons stated above, the impugned charge sheet dated 24.4.2000 (Annexure P/1) is quashed. The petition is allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur